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The Enterprise Foundation

735 15th Street, NW Suite 540
Washington, DC 20005-2112
Phone: 202 628-8666
Fax: 202 628-9800
Website: www.ncrc.org



August 1, 2004

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20551

RE: Interagency Guidance on Overdraft Protection Programs – Docket No. R-1197;
Docket No. OP-1 198

Dear Ms. Johnson:

The National Community Reinvestment Coalition (NCRC), the **nation's** largest CRA association of 600 member organizations, applauds you for considering the proposed interagency guidance to assist insured depository institutions in their responsible disclosure **and** administration of overdraft protection services, or what is commonly referred to as "bounced-check protection". Born out of the enactment of the Community Reinvestment **Act**, NCRC represents community-based organizations that **work** to increase fair access to credit, capital **and** banking services to underserved communities,

NCRC **strongly** believes that bounced loan programs should be regulated under the Truth in Lending **Act** (TILA), **and is** inadequate **and** objectionable under Regulation DD. In sum, **we** believe that bounced loan fees are finance charges subject to TILA disclosures, and consumers **need** coverage beneficial to protect them **from the** subtle abuses of bounced loan services.

These subtleties can include: (1) **lack** of disclosure in advertising bounced loan services; (2) lack of written criteria for eligibility for these services; (3) the order in which the **bank** pays checks **and** debits often paying the most expensive item first; (4) customers lack of knowledge of **how** these programs operate including fees incurred and interests/APR; (5) whether or not these services are **applicable** to ATM or debit **card** transactions; (6) whether **the bank has** a sustained overdraft fee and knowledge by the consumer of whether the product will be applied to their account.

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NCRC agrees that the proposed interagency guidance for adopting adequate policies and procedures addressing safety and soundness considerations, legal risks and best practices is an excellent beginning in adequately disclosing to consumers the financial risk associated with bounced check/overdraft protection services. However, the proposed guidelines merely skims the surface of a more serious and risky concern to consumers at large, and that is short-term, high rate loan programs very much akin to "payday lending".

Comparatively, many check cashing services fair a lot cheaper than opening up a checking account since customers bears no risk of overdrawing their bank accounts. The risk of a bank customer incurring cost for bounced loans is far more expensive and a lot more risky than the often complained about "payday lending. For example, a \$100 overdraft will incur at least a \$20 fee. If the consumer pays the overdraft fee within 30 days, the APR is about 243%. If paid back within 14 days, the APR is close to 520%, which is the typical timeframe for the average wage earner.

Unfortunately, bounced loans disproportionately impact a small percentage of consumers who are usually low-income and vulnerable. According to a survey conducted by the Consumer Federation of America (CFA) of who was most likely to overdraw their bank accounts, the results reflected the following: (1) Moderate income consumers with household incomes of \$25,000 to \$50,000 (37%), those 25 to 44 years of age (36%), and African Americans (45%) were most likely to have done so. Twenty-two percent of the lowest income group surveyed, making less than \$25,000 a year, and less educated consumers (33%) reported that they do not have bank accounts.

The CFA survey further revealed that 28% of consumers overdraw their accounts, and one third of them bounce at least three checks translating into about 9.3% of consumers.

NCRC agrees with the regulators that review of safety and soundness considerations for banks instituting overdraft protection services is paramount, and should address credit, operation and risks associated with these services. We agree that prudent risk management, account monitoring, underwriting and eligibility standards are critical in maintaining fewer delinquencies and loss of revenue for banking institutions. Furthermore, since most banking institutions have benefited greatly from instituting overdraft protection services, eligibility standards and account monitoring should also be the basis for absolute disclosure, and a more transparent system in protecting all bank consumers.

When opening a checking or savings account, customers upon eligibility should be required to opt in writing whether they accept or decline this service. Presently, many

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banks impose overdraft payment services for **certain** customers on a discretionary **and** inconsistent basis. Customers deserve the **right** to know whether they are **eligible** for the **terms and conditions of this** service from the onset **of** opening **an** account, or upon request **of this** service so that they remain cognizant of the fees, risks and **penalties** associated with **this** service contract.

If a customer has qualified for **a** certain dollar **amount** of protection, they should be informed in writing of the dollar limit, fees, **and penalties** (including interest/APR) incurred when that limit is exceeded. If there is no dollar limit identified in the contract, the customer **warrants** the right to know **that all** check or ATM withdrawals are also covered regardless of **the amount**,

For **first time** account holders, **many** previously unbanked, **low income and vulnerable**, the imposition of unexpected exorbitant fees associated with bounced check protection services could **further alienate** these account holders, and create **a** strong **distrust** of **banking** institutions. The impact of **luring** the unbanked into these commercial institutions, and **imposing** unsolicited fees on **an already streamlined** income **keeps** this new population of account holders in financial bondage barely able to remain above **the** threshold of poverty, and incapable of entering the **financial mainstream**.

Many in **the** banking industry agree that bounced check protection **is a** good and helpful **feature** in protecting consumers **from** merchant fees, **and in extreme** cases **criminal** liability for **writing** bad checks. The converse **is** that the **monetary** benefits of banks **far** outweigh **the** consumers interest by enormous profits **from the high fees** incurred by unsuspecting customers who are oblivious to their enrollment in a bounced check (loan) protection program.

Despite negative publicity **and** criticism **from consumers and** their advocates, these high cost **loans** are still **more prevalent than** ever with ready made advertising and marketing kits designed to entice gullible consumers. Unfortunately, these **aggressive marketing** campaigns have been designed to prey on **uninformed** customers encouraging them to **overdraw** their accounts. **These types** of advertisements have **deceptive** undertones intended to **convey** the **idea that** regardless of what **status the** account balances are **in**, payment purchases or **withdrawal** of funds will be available to customers with no difficulties.

Some advertisements on one hand encourage customers to overdraw **their** accounts; alternatively, some advertisements suggest that banks guarantee total coverage of a negative balanced account. Regardless, these advertisements **are** usually **implemented** without revealing to the customer that the **banks** decision to employ overdraft protection services is based on a "discretionary" basis. In our opinion, this inconsistency is tantamount to "bait and **switch**" tactics since customers **are** relying on these advertisements as a guarantee that is rarely accompanied by written disclaimer.



This *type* of advertisement **is** extremely misleading, contradictory and could **be** considered “deceptive” **and** “unfair practices” under the Federal Trade Commission Act.

NCRC *is* also concerned **about** bounced loan advertisements that do not disclose whether ATM **and/or** debit card transactions *are* included, not included or silent on the issue of bounced **loan** protection services. Not **only** is there no **affirmative** consent from the consumer, there **are also** no **additional** warnings **regarding** whether these services extend to **ATM and/or** debit card transactions.

Unfortunately, these types of loans are particularly **unfriendly** to consumers when accessed by **ATM** or debit cards. **Since** no retailer fees are incurred **by** consumers for declined transactions, these loans serve no other purpose but to provide exorbitantly priced **payday** loans or credit cards, Banks **confirm** available **funds**, and traditionally transactions are **declined** with **no** fee when consumers **have** **insufficient** funds in **their** account, Therefore, a decision of a bank to program its computers to permit overdrafts when there are no **funds** available is a deliberate and culpable act on the **part** of the bank to permit **overdrafts** where none **would** have occurred previously. It is apparent that this service is solely for the purpose of these financial institutions to collect additional fees.

With ATM cards, the **purpose** of the **transaction** is to **provide** cash directly to the consumer. There **is** no merchant or third party **involved**. With pin-based debit **card** transactions **through** MasterCard or **VISA** **networks**, most merchants will check fund availability **from** a bank **informing** them of **whether** an account **will be** **overdrawn**. **Allowing** overdraft protection in this context is more financially **injurious** to the consumer **than** simply declining the transaction. Once notified of decline, the customer **may** **opt** to **use** **an** alternative method of payment or **return** the merchandise. **This** avoids incurring hefty **fees** of \$20 to \$35. Also, the MasterCard or **VISA** **network** **used** **by** point-of-sale transactions **gives** more credence in treating debit card bounced loan **transactions** as “credit” transactions.

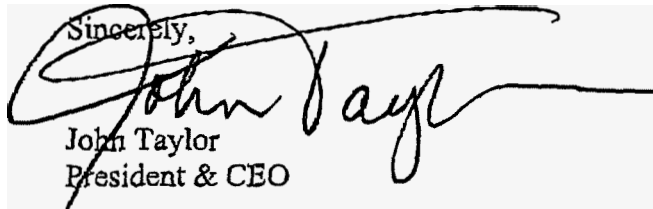
Finally, NCRC feels strongly that the **banking** regulators **should** consider banning bounced **loans** through ATM and on-line debit **transactions** through the authority of the Federal Trade Commission. **At** a **minimum**, banking regulators need to **make** **mandatory** its suggestion that consumers be given **an** opportunity to **cancel** ATM and debit **card** transactions **that will** overdraw **their** accounts. It is unfortunate that **with** overdraft protection services, **consumers** are **now** paying overdraft fees for ATM and debit card transactions that **were** previously declined with no fee. **This** is **an** expensive product that is **totally** unnecessary to burden consumers without **their** consent.

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Free checking was an **early CRA product designed to expand access to credit**, and to reach low to moderate consumers **and** the unbanked. **As** a result of financial modernization, more **and more fee based products, including overdraft** protection, are unnecessarily pilfering resources from consumers in general **and** allowing lenders to profit **at the expense** of CRA. This **is** totally unacceptable for **all** of **the** reasons identified in **this** comment. Further, in a real effort to rid **banks** of this practice, federal regulators should impose **penalties** for CRA exam purposes for **banks** possessing accounts that **have** abusive or deceptive overdraft protection products.

Sincerely,



John Taylor
President & CEO